

Applicant : Yang, et al  
Appl. No. : 09/347,845  
Examiner : Bui, Vy Q.  
Docket No. : 702563.40

## REMARKS

In the Office Action, the Examiner rejected claims 1, 3-4, 8-15, 17-22 and 24-25 under 35 U.S.C. 102(e) as anticipated by USP 6,193,747 to Von Oepen; rejected claims 2 and 23 under 35 U.S.C. 103(a) for obviousness over the Von Oepen patent in view of USP 6,224,626 to Steinke; and rejected claims 5-6 under 35 U.S.C. 103(a) for obviousness over the combination of the Von Oepen and Steinke patents, in further view of USP 5,824,054 to Khosravi. The Examiner stated that Applicant's amendment filed 9/15/2003 had been considered but had not overcome the Von Oepen reference as indicated in the rejection.

In response, Applicants have amended claims 1 and 12 to overcome the Examiner's rejections. As explained below, Applicant submits that the subject application is in condition for allowance, and earnestly requests both entry of the amendment and allowance of the claims.

### Claim Rejections Under 35 U.S.C. 102(e)

The Examiner rejected claims 1, 3-4, 8-15, 17-22 and 24-25 under 35 U.S.C. 102(e) as being anticipated by von Oepen (USP 6,193,747). In response, Applicant has amended claims 1 and 12 to recite features of the claimed stent that are not present in the devices disclosed in the von Oepen patent. Specifically, amended claim 1 recites that the central portion of the stent tubular body consists essentially of cylindrical bands comprising non-sinusoidal diagonal elements and non-sinusoidal longitudinal connectors connecting adjacent cylindrical bands, while amended claim 12 recites that the central portion of the stent tubular body consists essentially of generally bat-shaped cells formed from non-

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sinusoidal cylindrical bands and non-sinusoidal longitudinal connectors. The “consists essentially of” transition phrase indicates that the claim is partially open, i.e., that the invention includes the recited elements and is open to unlisted elements that do not materially affect the basic and novel properties of the invention. PPG Industries v. Guardian Industries Corp., 156 F.3d 1351, 1354 (Fed. Cir. 1998). A “consisting essentially of” claim occupies middle ground between closed claims that are written in a “consisting of” format and fully open claims that are drafted in a “comprising” format. Id.

In contrast, the von Oopen patent discloses a stent having a sinusoidal web pattern connected by “spring elements” of several disclosed shapes. For example, the Examiner refers to the Figure 8 structure, which includes a sinusoidal web pattern 62 separated by spring elements 64 and 65. This structure, therefore, does not consist essentially of cylindrical bands comprising non-sinusoidal diagonal elements, nor does it consist essentially of generally bat-shaped cells formed from non-sinusoidal cylindrical bands.

Moreover, in the current Office Action, the Examiner characterized the sinusoidal web pattern in the Von Oopen stent as a longitudinal connector. However, the Von Oopen web patterns cannot be “generally non-sinusoidal longitudinal connectors,” as the presently amended claims recite. Nor do the present claims having the “consists essentially of” transition permit a construction that covers the Von Oopen stent structure.

Thus, each of claims 1 and 12 distinguishes over the stents shown in the von Oopen patent. Each of the other rejected claims is dependent on one or the other of claims 1 and 12, and each is therefore distinguished from von Oopen on the same basis.

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Accordingly, because each of the independent claims of the present application contains limitations not found in the von Oepen patent, the section 102(e) rejection is overcome and the claims are in condition for allowance.

**Claim Rejections Under 35 U.S.C. 103(a)**

The Examiner rejected claims 2, 5-6, and 23 under 35 U.S.C. 103(a) as being unpatentable over the von Oepen patent in view of Steinke (USP 6,224,626) (as to claims 2 and 23) and Khosravi et al. (USP 5,824,054) (as to claims 5-6). Because neither of the cited references, either alone or in combination, discloses, teaches, or suggests the subject matter of the claims as presently amended, reconsideration and withdrawal of the rejections is respectfully requested.

Specifically, the section 103 rejections are based upon the same analysis of the von Oepen patent addressed above in relation to the section 102(e) rejections. Accordingly, for the same reasons set forth above, the combination of the von Oepen, Steinke, and Khosravi et al. patents fail to disclose all of the limitations recited in the amended claims. The claims are, therefore, in condition for allowance.

**CONCLUSION**

In view of the foregoing, it is submitted that the claims presented in this application define patentable subject matter over the cited prior art. Accordingly, Applicant respectfully requests entry of the amendments and allowance of the claims.

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The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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By:   
Charles C. Fowler  
Reg. No. 39,675  
Attorneys for Applicants

4 Park Plaza, Suite 1600  
Irvine, California 92614-2558  
(949) 567-6700